STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
Owen, P.J., Cavanagh and Neff, J.J.

CITY OF MOUNT PLEASANT,

Plaintiff-Appellant,

Supreme Court No. 129453

v

MICHIGAN STATE TAX COMMISSION,

Court of Appeals No. 253744

Defendant-Appellee.

Michigan Tax Tribunal No. 191496

_____/

BRIEF ON APPEAL - APPELLEE

ORAL ARGUMENT REQUESTED

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QUESTION PRESENTED FOR REVIEW

I. **MCL § 211.7m exempts real property from property tax if it is presently used by a city for a public purpose. The City of Mt. Pleasant annexed 320 acres of property to the city intending to sell the property for economic development and to expand its tax base. Mt. Pleasant was not using the property for a public purpose when it claimed the exemption. Was the property exempt from property tax under MCL § 211.7m?**

COUNTER-STATEMENT OF PROCEEDINGS AND FACTS

The Tax Tribunal's factual findings in this case are not disputed. Prior to the hearing, the parties stipulated to place agreed-upon facts and exhibits on the record due to the extensive facts. This statement of facts is based on the Tribunal's factual findings.

During the 1990 calendar year, the City of Mt. Pleasant acquired and annexed 320 acres of real property.[1] Mt. Pleasant acquired and annexed the property to obtain land it believed necessary to construct a "ring road" around the city, for the widening and extension of various major streets, and to provide for future industrial tax base in accordance with Mt. Pleasant's Master Plan.[2] Mt. Pleasant commissioned a street study to justify the Urban Master Plan for Streets and a housing study that showed a need for approximately 1000 additional housing units in the city over a 10-year period.[3] But the street study, the master plan for streets, and the housing study were not introduced at the hearing.[4]

Over time, Mt. Pleasant platted, marketed, and sold the property to various developers, investors, or governmental agencies.[5] In those instances where property was sold to private developers, the developers built residential subdivisions, retail strip malls, and office buildings. Some of the housing was sold or rented to the general public.[6] Additionally, Mt. Pleasant's City Manager testified on direct examination at the hearing that a parcel was earmarked for a park.[7]

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[1] Tax Tribunal Opinion and Judgment, Finding of Fact No. 2, Appellant's Appendix, p 195a.
[2] Tax Tribunal Opinion and Judgment, Finding of Fact No. 3, Appellant's Appendix, p 195a.
[3] Tax Tribunal Opinion and Judgment, Finding of Fact No. 4, Appellant's Appendix, p 195a.
[4] Tax Tribunal Opinion and Judgment, Finding of Fact No. 4. Appellant's Appendix, p 195a.
[5] Tax Tribunal Opinion and Judgment, Finding of Fact No. 5, Appellant's Appendix, p 195a.
[6] Tax Tribunal Opinion and Judgment, Finding of Fact No. 6, Appellant's Appendix, p 195a.
[7] Tax Tribunal Hearing Transcript, pp 23-24, Appellant's Appendix, p 121a – 122a.

But the City Manager admitted on cross-examination that the land was not being used for a park at the time the exemption was claimed.[8]

Finally, the property that Mt. Pleasant identified as "Industrial Park" was sold to either developers or end users who constructed various commercial or industrial structures on the property.[9] All of the property was sold to and developed by private parties. Mt. Pleasant did not build its own structures on the property – it merely sold the property to private parties, who then improved it.

Against Mt. Pleasant's wishes, the City Assessor placed these parcels on the 1993 assessment roll. This decision was affirmed by the March Board of Review, from which Mt. Pleasant appealed to the Tax Tribunal (MTT Docket Nos. 191496 & 196247).[10]

In June 1995, a member of Treasury's Property Tax Division, James Johnson, and Assistant Attorney General Ross Bishop, made a site visit to visually inspect the subject property.[11] On January 30, 1996, Johnson advised the City Assessor that the property should be placed on the 1996 assessment roll and the City Assessor did so.[12] In response, Mt. Pleasant filed a petition with the Tax Tribunal (MTT Docket No. 238596) alleging that the property was exempt under MCL 211.7m.[13]

After a hearing on the consolidated appeals, the Tax Tribunal issued its Opinion and Judgment on October 31, 2003, which held that the property did not qualify for a property tax exemption. Mt. Pleasant filed a motion for reconsideration, which the Tribunal denied. On or

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[8] Tax Tribunal Hearing Transcript, p 31, Appellant's Appendix, p 129a.
[9] Tax Tribunal Finding of Fact No. 7, Appellant's Appendix, p 196a.
[10] Tax Tribunal Finding of Fact No. 12, Appellant's Appendix, p 196a.
[11] Tax Tribunal Finding of Fact No. 14, Appellant's Appendix, p 197a. Also see January 30, 1996 Letter, Appellant's Appendix, p 46a.
[12] Tax Tribunal Finding of Fact No. 17, Appellant's Appendix, p 197a. Also see January 30, 1996 Letter, Appellant's Appendix, p 46a.
[13] Tax Tribunal Finding of Fact Nos. 16 & 18, Appellant's Appendix p 197a and 198 a.

after February 11, 2004, Mt. Pleasant timely filed its Claim of Appeal with the Michigan Court of Appeals. On June 21, 2005, in a published opinion, the Court of Appeals affirmed the Tax Tribunal's finding that the property was not exempt from property tax for the years at issue. Mt. Pleasant subsequently filed an Application for Leave to Appeal to this Court, which this Court granted on January 13, 2006. On January 31, 2006, this Court ordered that this case will be argued and submitted to the Court with the case of *Municipal Employees Retirement Systems of Michigan v Charter Twp of Delta,* Docket No. 129041.

ARGUMENT

I. The Tax Tribunal and Court of Appeals properly determined that the City of Mt. Pleasant's use of vacant land to hold, market, and sell to private parties for private uses is not use for a public purpose.

A. Standard of Review

The standard for reviewing property tax decisions of the Tax Tribunal is identified in Const 1963, art 6, § 28. That provision states that, in the absence of fraud, judicial review of decisions of the Tax Tribunal is limited to determining whether the Tax Tribunal erred in applying the law or adopted a wrong principle.[14] The factual findings of the Tax Tribunal are final and conclusive if supported by competent, material and substantial evidence.[15] Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.[16]

Additionally, this question requires the Court to interpret the Michigan General Property Tax Act. Statutory interpretation is a question of law that is reviewed de novo on appeal.[17]

B. Introduction.

This case comes down to one simple question: what was Mount Pleasant doing with its 320 acres at the time it claimed that the property was exempt? The case hinges solely on the answer to that question. All parties agree that, at the time the exemption was claimed, Mt. Pleasant *intended to do* the following two things with its 320 acres:

1) Use it to expand its tax base; and

2) Use it to facilitate economic development.

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[14] *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994); *rehearing denied*, 446 Mich 1201; 522 NW2d 629; *cert denied*, 513 US 1016; 115 S Ct 577; 130 L Ed 2d 492 (1994).
[15] *Michigan Bell*, 445 Mich at 476.
[16] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 463; 462 NW2d 795 (1990).
[17] *Wickens v Oakwood Healthcare System*, 242 Mich App 385, 389; 619 NW2d 7 (2000).

But, at the time the exemption was claimed, all that Mt. Pleasant was doing with the property was watching it sit empty while they waited to sell it. At the time the exemption was claimed, Mt. Pleasant was not using the property for an expanded tax base, because it was undeveloped, vacant land, owned by Mt. Pleasant itself. And, at the time the exemption was claimed, Mt. Pleasant was not using it to further economic development, because there were no buildings, residential homes, commercial enterprises, or industries on the property to provide economic development.

The foundation of this dispute is § 7m of Michigan's General Property Tax Act, MCL § 211.7m, which states as follows:

> Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. Parks shall be open to the public generally. This exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition.

So, MCL § 211.7m means that a governmental entity may exempt its real estate from the general ad valorem property tax when it is using the property for a public purpose.

Over time, this Court has had occasion to define "public purpose." In *Gregory Marina Inc v Detroit,* this Court stated[18]:

> The determination of what constitutes a public purpose is primarily a legislative function, subject to review by the courts when abused, and the determination of

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[18] *Gregory Marina Inc v Detroit*, 378 Mich 364, 396; 144 NW2d 503, 516 (1966) (quoting 37 Am Jur, Municipal Corporations, § 120, pp 734, 735).

> the legislative body of that matter should not be reversed except in instances where such determination is palpable and manifestly arbitrary and incorrect.'

In *City of Gaylord*, the Court cited its decision in *Hays v Kalamazoo* for the following proposition[19]:

> Generally, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose.

Thus, by this Court's definition, a public purpose is one that benefits the residents of the city. Because this case deals with the larger phrase "use for a public purpose," a definition of "use" is also helpful. The American Heritage Dictionary defines "use" as "[t]o bring or put into service; employ[.]"[20] Thus, a city uses property for a public purpose when it puts the property into service for a purpose that benefits the residents of the city.

Additionally, Michigan Courts have reviewed MCL § 211.7m to determine whether property is tax exempt for a "public purpose" in specific situations. For example, public lands used in the reasonable exercise of police powers to promote public safety are tax-exempt lands used for public purposes.[21] And municipally owned and operated parking lots are tax-exempt lands used for public purposes.[22] Mt. Pleasant's use is unlike either of these examples.

Mt. Pleasant did not put its land into service prior to claiming the MCL § 211.7m tax exemption. The city had great intentions as to how the property would serve the public good, but its intentions had not yet seen fruition when it claimed the exemption. In fact, Mt. Pleasant's

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[19] *City of Gaylord v City Clerk*, 378 Mich 273, 300; 144 NW2d 460 (1966) (citing *Hays v City of Kalamazoo*, 316 Mich. 443, 445, 454; 25 NW2d 78 (1947) and 37, Am Jur, Municipal Corporation, § 120, p 734).
[20] American Heritage Dictionary, 2d Ed (Houghton Mifflin Co, 1991).
[21] *Thomson v City of Dearborn* 348 Mich 300, 303; 83 NW 2d 329 (1957).
[22] *Thomson v City of Dearborn* 348 Mich 306-307; 83 NW 2d 329 (1957).

intentions only saw fruition *after* Mt. Pleasant no longer owned the property. Consequently, Mt. Pleasant's 320 acres was not entitled to an exemption from property tax under MCL § 211.7m.

C. Mt. Pleasant has the burden to prove that its land is entitled to a property tax exemption.

Two of the most fundamental principles of tax law are that 1) the taxpayer claiming an exemption has the burden to prove that it is entitled to the exemption, and 2) a tax exemption must be narrowly construed and not expanded beyond what the Legislature intended.[23] In *Elias Bros Restaurants Inc v Dep't of Treasury,*[24] this Court stated that tax exemptions are disfavored and the person claiming the exemption has the burden to prove that he or she is entitled to it.[25]

This Court summed up these principles in the case of *In re Smith Estate,* when it stated[26]:

> [I]t is well to observe that our point of departure in the interpretation of any taxing act is the consideration that a preference in or an exemption from taxation must be clearly defined and without ambiguity. Taxation, like rain, falls on all alike. True, there are, in any taxing act, certain exceptions, certain favored classes, who escape the yoke. But one claiming the unique and favored position must establish his right thereto beyond doubt or cavil.

Mt. Pleasant is claiming an exemption from property tax for its entire 320-acre parcel. So, Mt. Pleasant must prove that its entire 320 acres meets the requirements of the exemption statute. This, Mt. Pleasant has not done.

D. Mt. Pleasant was not using the 320 acres for a public purpose when it claimed the exemption.

The question of when a use is for a public purpose is not one of first impression for this Court. Relatively early in Michigan's jurisprudence, in 1916, this Court heard the case of

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[23] See *In re Smith Estate,* 343 Mich 291; 72 NW2d 287 (1955); *Detroit v Detroit Commercial College,* 322 Mich 142; 33 NW2d 737 (1948); *Edison v Dep't of Revenue,* 362 Mich 158; 106 NW2d 802 (1961).
[24] *Elias Bros Restaurants Inc v Dep't of Treasury,* 452 Mich 144; 549 NW2d 837 (1996)
[25] *Elias Bros Restaurants Inc,* 452 Mich at 150 (referring to *Terchek v Dep't of Treasury,* 171 Mich App 508, 510-511; 431 NW2d 208 (1988)).
[26] *In re Smith Estate,* 343 Mich 291, 297; 72 NW2d 287 (1955).

Traverse City v East Bay Twp[27] – a case that has since been cited with approval in cases in both Michigan and other states. In *Traverse City*, the city had purchased 960 acres of vacant land in East Bay Township. The township assessed taxes against the city and the city protested the assessment, stating that the land was exempt because it was being used for a public purpose. The land was undeveloped at the time that Traverse City claimed the exemption. Like Mt. Pleasant, Traverse City's argument was that, though presently undeveloped, the city intended to use the land for future development of additional power, as needed by the city. In *Traverse City* this Court rejected the city's exemption claim. The Court noted that the land lay in a state of nature and was not used for any purpose, let alone a public purpose, at the time Traverse City claimed the exemption.[28] The Court stated that only a "present use, and not an indefinite prospective use" would allow Traverse City to claim the use for public purpose exemption.[29]

In 1930, this Court again heard arguments regarding a tax exemption for a public purpose, in the case of *Rural Agricultural School District v Blondell.*[30] In *Rural Agricultural School District*, the school district owned property that it intended to use for school purposes. But at the time the school district claimed a public purpose exemption, there were residential homes on the land and the homes were being rented to individuals. This Court reiterated its opinion that an "exemption of property from taxation, made contingent upon use for public purposes, does not extend to a future use but is limited to present use."[31] Because the school district was not using the land for a public purpose at the time it claimed the exemption, this Court denied its claim.

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[27] *Traverse City v East Bay Twp,* 190 Mich 327; 157 NW 85 (1916).
[28] *Traverse City v East Bay Twp,* 190 Mich at 330.
[29] *Traverse City v East Bay Twp,* 190 Mich at 331.
[30] *Rural Agricultural School District v Blondell,* 251 Mich 525; 232 NW 377 (1930).
[31] *Rural Agricultural School District v Blondell,* 251 Mich at 527.

Despite Mt. Pleasant's protests to the contrary, this case presents exactly the same situation as *Traverse City* and *Rural Agricultural School District.* The only arguable "use" to which Mt. Pleasant was putting the land at the time it claimed the exemption was platting and marketing it for sale, while hoping that it would serve an economic development purpose in the future. Mt. Pleasant attempts to distinguish *Rural Agricultural School District* on the basis that *Rural Agricultural School District* dealt with an exemption for schools. But the exemption at issue in *Rural Agricultural School District* was for use for public purposes, as it is in this case – whether the actor was a city or a school district is unimportant to the issue of whether a public purpose was present. The important point of *Rural Agricultural School District* in comparison to this case is that the exemption was denied there because the school district was not using the land for a public purpose at the time it claimed the exemption. The same is true with respect to Mt. Pleasant in the present case.

Mt. Pleasant tries to distinguish *Traverse City* by claiming that Traverse City held the land with no purpose in mind. But even a cursory reading of this Court's opinion shows that claim to be incorrect. Traverse City had plans for the land – it planned to use it to develop more power. The Court termed Traverse City's plans to be an "indefinite prospective use," because it was unknown when the land would be utilized. At the time that Mt. Pleasant claimed its exemption, its planned use was also an indefinite prospective use. Mt. Pleasant had no way to know whether or when developers would be interested in purchasing and improving the property. And without such purchases, the land would have continued to lie in a state of nature and Mt. Pleasant's economic development plans would have merely collected dust. Like Traverse City, Mt. Pleasant knew what it wanted. But it could not possibly predict with any accuracy when its desires would become reality.

Mt. Pleasant also tries to distinguish *Traverse City* on the basis that the land in *Traverse City* lay "in a state of nature." Yet, the same is true of the land in this case, for the time that Mt. Pleasant owned it. Granted, we know that the land at issue in this case was eventually used and improved, but it was not used or improved under Mt. Pleasant's ownership. It certainly had not been used or improved prior to Mt. Pleasant claiming the MCL § 211.7m exemption. Only after Mt. Pleasant sold the land to private parties was it arguably used for the purposes Mt. Pleasant intended. Like Traverse City and the RASD, Mt. Pleasant had lofty goals for the public purposes that use of its land would accomplish. But, also like Traverse City and the RASD, Mt. Pleasant had yet to achieve those purposes at the time it claimed a property tax exemption.

More recently, this Court briefly discussed the definition of a "public purpose" in *Wayne Co v Hathcock,* and Mt. Pleasant relies on this case.[32] The major issue in *Wayne Co* was whether the county could condemn individuals' property under eminent domain powers without violating Michigan's statutes or Constitution. To do so, the county had to condemn these properties with a public purpose in mind and put the properties to a public use.[33] In the end, the Court held that the county had the authority to take property by eminent domain, but that its plans for the property were not a public use, and thus the taking was unconstitutional. The importance of the *Wayne Co* holding in comparison to this case is the Court's discussion of whether Wayne County's goals constituted a public purpose. Wayne County's goals included increasing the county tax base and supporting development of jobs and investments in the county. The Court reiterated its *Gaylord* definition of a public purpose as[34]:

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[32] *Wayne Co v Hathcock,* 471 Mich 445; 684 NW2d 765 (2004).
[33] MCL § 213.23.
[34] *Wayne Co v Hathcock,* 471 Mich at 462 (citing *Gaylord v Gaylord City Clerk,* 378 Mich 273, 300; 144 NW2d 460 (1966)).

> [T]hat which "has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, the sovereign powers of which are used to promote such public purpose."

The Court then said that plans meant to aid a struggling economy certainly promote a public purpose.[35] But – because it did not need to – the Court did not consider whether the county's act of merely making plans for such a development constituted *use* for a public purpose. The Court did not have to make this decision, because the question of use would be decided under a different standard – that of a "public use." Neither did the Court consider whether plans for economic development were a *present* use of the land. So *Wayne Co* does nothing to dispense with the present use requirement that is at issue in this case.

All parties to this case agree that promoting the formation of new jobs, affordable housing, and a healthy economy are goals that benefit the public. The State Tax Commission is not arguing that economic development is not a laudable goal and does not serve a public purpose. But MCL § 211.7m allows an exemption only for actual *use for a public purpose* – not for merely having a future goal that will benefit the public *if and when* it is achieved. This was an issue at the Court of Appeals oral argument – where the terms "public purpose," "public use," and "used for a public purpose" were mistakenly being employed interchangeably. The Court of Appeals panel below wisely made its decision by applying the term "used for a public purpose" to this case. This Court in *Wayne Co* did not decide whether holding land while having a plan to advance the commonweal is "use for a public purpose." In contrast, the *Traverse City* and *Rural Agricultural School District Courts* did decide that issue, because the statutes at issue in those cases included the same wording. And they both said that a plan is not enough – *that the actual use must be present at the time the exemption is claimed.*

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[35] *Wayne Co v Hathcock*, 471 Mich at 462.

From a study of these cases, it is apparent that two requirements must be met in order for Mt. Pleasant's property to be exempt from property tax:

1) The property must be used for a public purpose; and

2) The use must be present at the time the exemption is claimed.

By the language of its own brief, Mt. Pleasant repeatedly admits that neither of these requirements was met. Mt. Pleasant states that it acquired the land "for *eventual* sale for economic development purposes."[36] Mt. Pleasant further stated that the land "was acquired to *permit* the City to expand so that it *could address* the traffic problems, and foster economic development, and *eventually* expand its tax base."[37] These goals are public purposes, but Mt. Pleasant was not using the land for the purpose at the time it claimed the exemption. All that Mt. Pleasant had done at the time it claimed the exemption was commence competing with private developers by marketing and selling the land to private individuals for use for private purposes.

E. None of the other exemptions available in the General Property Tax Act apply to this case.

Mt. Pleasant described additional exemptions available under the General Property Tax Act in its brief. All parties agree that Mt. Pleasant did not avail itself of these other exemptions and none of the exemptions apply to this case. Instead, Mt. Pleasant is asking the Court to act as the Legislature and re-write MCL § 211.7m so that Mt. Pleasant would be entitled to the exemption.

Furthermore, the Court did not direct the parties to brief this issue. Because of this, the State Tax Commission will not do so. Instead, suffice it to say that none of the other exemptions apply and they are not at issue in this case.

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[36] Appellant's Brief, p 9 [Emphasis added.].
[37] Appellant's Brief, p 10 [Emphasis added.].

CONCLUSION

Mt. Pleasant's property at issue in this case consists of four parcels of land, comprising 320 acres. Over time the acreage was platted, marketed, and sold, at which time *the purchaser* constructed residential, retail, office, and industrial structures on the property. Admittedly, Mt. Pleasant never owned and operated a police station, a park, low income housing, or other public services on the property. Indeed, Mt. Pleasant did not put the land to *any* use, public or otherwise. Instead, Mt. Pleasant is asking this Court to create new law whereby the speculative holding of property by a municipality, and the property's subsequent sale and development, should be considered use for a public purpose – that purpose being economic development.

To maintain the integrity of the statute and this Court's prior definition and analysis of "use for a public purpose," Mt. Pleasant's exemption request should be denied.

RELIEF SOUGHT

The Respondent-Appellee requests that this Honorable Court affirm the decisions of the Michigan Tax Tribunal and Court of Appeals and deny the Petitioner-Appellant's request to exempt its property under MCL § 211.7m.

Respectfully submitted,

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